

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSIE WILLIAMS,

Plaintiff,

v.

FRAN MONROE-JENNINGS,

Defendant.

OPINION AND ORDER

12-cv-135-bbc

In this civil action for monetary relief under 42 U.S.C. § 1983, plaintiff Jesse Williams, a prisoner at the Waupun Correctional Institution, is proceeding on a claim that defendant Fran Monroe-Jennings, a nurse at the institution, violated his rights under the Eighth Amendment by failing to provide him adequate medical treatment after he bit into a piece of metal. The case is before the court on the parties' cross motions for summary judgment. Dkts. ##16, 23. After reviewing the parties' submissions, I conclude that defendant's motion must be granted and plaintiff's motion must be denied. Even assuming that plaintiff was suffering from a serious medical need as a result of biting into a piece of metal, no reasonable jury could conclude that defendant acted with deliberate indifference to plaintiff's medical need.

The undisputed facts are set forth below. They are taken from the parties' proposed findings of fact and the record. I note that although plaintiff proposed facts and submitted

an affidavit to support them, he did not respond to defendant's proposed findings of fact. In accordance with this court's summary judgment procedures, I have treated all of defendant's properly supported facts as undisputed unless they conflicted clearly with plaintiff's proposed findings of fact. Procedure to be Followed on Motions for Summary Judgment, II.D, dkt.#12 ("If you dispute a proposed fact, state your version of the fact and refer to evidence that supports that version."); Helpful Tips for Filing a Summary Judgment Motion, Tip No. 3, dkt. #12 ("A fact properly proposed by one side will be accepted by the court as undisputed unless the other side responds to the proposed fact and establishes that it is in dispute.").

UNDISPUTED FACTS

Plaintiff Jesse Williams is incarcerated at the Waupun Correctional Institution, where defendant Fran Monroe-Jennings is employed by the Wisconsin Department of Corrections as a registered nurse. On January 14, 2008, plaintiff asked to speak to defendant while she was making her rounds in his unit. (Although plaintiff states that this event happened on January 8, 2008, the medical record to which he cites confirms that the event occurred on January 14, 2008). Plaintiff told defendant that he had bitten into a piece of metal and stated that he thought someone was messing with his food. Plaintiff showed defendant two staples on his meal tray and was holding his throat.

Defendant asked plaintiff to approach his cell window so that she could look into his throat. Plaintiff responded that he could not straighten his head to show defendant his

throat, so defendant was unable to examine the inside of his throat. (Plaintiff says that the metal he bit into cut his mouth and caused it to bleed. Defendant denies seeing any lacerations or blood in or around plaintiff's mouth area.) Defendant saw that plaintiff's color was normal and did not observe any physical signs indicating an alteration in plaintiff's airway. Plaintiff showed no signs of labored breathing and his speech was normal. He was able to yell at defendant and the officers. Defendant concluded that plaintiff did not need any medical intervention. She told the sergeant on duty to notify the health services unit if plaintiff had any other concerns with his throat. (Plaintiff says that defendant told him she would check on him later. Defendant denies saying this.)

After this event, plaintiff's mouth hurt for two days and he had difficulty eating. He did not request further attention from security staff or the health services on January 14. The next day, January 15, 2008, plaintiff went to the health services unit with complaints about his ear. At the visit, he did not report any complaints concerning a laceration in his mouth related to swallowing or biting into metal or any problems with having swallowed metal. Plaintiff did not report any further medical complaints concerning swallowing pieces of metal. (Plaintiff says he saw someone from the health services unit about his mouth, citing his medical record. However, the portion of his medical record that he cites is defendant's summary of her interaction with plaintiff on January 14. There is no other evidence in his medical record related to defendant's mouth.)

OPINION

Plaintiff contends that defendant violated his rights under the Eighth Amendment by failing to provide him treatment after he bit into metal that was in his food. To survive defendant's motion for summary judgment, plaintiff must present evidence supporting the conclusion that he had an "objectively serious medical need" and that defendant was aware of his serious medical need and was "deliberately indifferent" to it. King v. Kramer, 680 F.3d 1013, 1018 (7th Cir. 2012) (citing Estelle v. Gamble, 429 U.S. 97, 104-05 (1976)). Defendant challenges plaintiff's ability to show either element of his Eighth Amendment claim.

With respect to the first element, a medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez v. Peters, 111 F.3d 1364, 1371-73 (7th Cir. 1997), "significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (1994). Defendant contends that any cuts or other medical problems caused by metal in plaintiff's food were not a serious medical need. This is likely true. Other than plaintiff's own testimony, there is no evidence in the record to support plaintiff's contention that he cut his mouth, choked or suffered from significant pain and an inability to eat as a result of biting into or swallowing metal. When defendant saw plaintiff, she noted that his color was normal, he had no labored breathing or other signs

of choking and he was able to talk and shout at defendant and other staff. She did not see any blood from an alleged mouth laceration. Additionally, when plaintiff was seen by medical staff the following day for an ear problem, he said nothing about pain in his mouth or an inability to eat. In fact, other than his conversation with defendant on January 14, plaintiff did not complain to any security or medical staff about his mouth, about having choked the day before or about defendant's alleged failure to provide care.

That being said, for the purpose of resolving defendant's motion for summary judgment, I must view all facts and inferences in the light most favorable to plaintiff. Wisconsin Alumni Research Foundation v. Xenon Pharmaceuticals, Inc., 591 F.3d 876, 882 (7th Cir. 2010). If a reasonable jury believed plaintiff's version of events, the jury could conclude that plaintiff had a serious medical need because he was in significant pain and was unable to eat.

However, even if a reasonable jury could conclude that plaintiff had a serious medical need, no reasonable jury could conclude from the evidence in the record that defendant was deliberately indifferent to it. "Deliberate indifference" means that the defendant was aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). When the defendant is a medical professional that has provided some treatment to the plaintiff, the question is whether that treatment was constitutionally adequate. Duckworth v. Ahmad, 532 F.3d 675, 679 (7th Cir. 2008). To prove that it was not, plaintiff must show that the treatment "decision [wa]s such a substantial departure from accepted professional judgment,

practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment.” Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261-62 (7th Cir. 1996). See also Snipes v. DeTella, 95 F.3d 586, 590-91 (7th Cir. 1996) (plaintiff must show that treatment decision was “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition”).

Plaintiff has not shown that defendant’s actions were “blatantly inappropriate” or a “substantial departure” from accepted professional judgment. It is undisputed that defendant responded to plaintiff at his cell door when he asked to see her. Although plaintiff told defendant that he had bitten into metal, defendant observed nothing that led her to conclude, in her professional judgment, that plaintiff was in medical danger. Plaintiff was not choking, he was able to speak and defendant did not see any cuts in his mouth. On the basis of her assessment, defendant did not believe any medical intervention was warranted. Nonetheless, plaintiff asked the sergeant on the unit to notify the health services unit staff if plaintiff had any further concerns with his mouth or throat. Even if it is true that defendant told plaintiff she would check on him later and then failed to do so, as plaintiff avers, no reasonable jury could conclude that defendant’s failure to check on plaintiff constituted deliberate indifference, because there is no evidence in the record to suggest that defendant believed plaintiff needed medical treatment. Additionally, there is no evidence that plaintiff asked for medical attention later or that anyone notified defendant that plaintiff needed medical attention after defendant’s initial observation of plaintiff. Accordingly, defendant is entitled to summary judgment on plaintiff’s claim.

ORDER

IT IS ORDERED that

1. Plaintiff Jesse Williams's motion for summary judgment, dkt. #16, is DENIED.
2. Defendant Fran Monroe-Jennings's motion for summary judgment, dkt. #23, is GRANTED.
3. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 22d day of January, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge